

REMARKS

Claims 1, 3-7, 9-14, and 16-21 are pending. Claims 1, 3-7, 9-14, and 16-21 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,523,026 to Gillis. Claims 2, 8, 15 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,523,026 to Gillis in view of U.S. Patent No. 5,799,276 to Komissarchik et al.

Reconsideration is requested. No new matter is added. The rejections are traversed. Claims 1, 3-7, 9-14 and 16-21 remain in the case for consideration.

The Examiner and the Applicant are in agreement that if the specification amendments previously presented can be supported, then the claims are allowable over Gillis, with or without Komissarchik. The Examiner and the undersigned are also in agreement that U.S. Patent Application Serial No. 09/615,726 ("the '726 application") supports such language, and that the claims in the '726 application includes language that relies on this language. The Applicant has withdrawn the '726 application from issue in order to amend the specification in that application to explicitly recite support for the claim language in the '726 application and in this application. Once this language is added to the '726 application, the claims in this application, which incorporates the '726 application, will be properly supported.


The Examiner has noted that the MPEP indicates that indirect incorporation by reference is not permitted. The Applicant acknowledges this fact. Nevertheless, the Applicant believes that once the '726 application is amended, the claims in this application will be properly supported. There can be no argument that the subject matter of the '963 application was incorporated by reference into the '726 application, so the amendment of the specification in the '726 application is entirely appropriate, and does nothing more than make explicit what was already implicit in the specification. Then, the '726 application will provide literal, direct support for the specification amendment in this application.

The reason for the MPEP refusing indirect incorporation by reference, as explained by the Examiner, is to avoid persons reading the application having to look at any references other than those explicitly and directly incorporated by reference into the issued patent. Once the specification in the '726 application is amended and that patent application issues, a reader of this patent application will be able to find all the necessary support for the claims looking at only the references directly incorporated by reference into this patent application.

The Applicant hereby petitions the U.S. Patent & Trademark Office to suspend prosecution in this application under 37 C.F.R. § 1.103(a) in the accompanying petition, to permit the Examiner in the '726 application time to consider and enter the specification amendment.

For the foregoing reasons, reconsideration and allowance of claims 1, 3-7, 9-14, and 16-21 of the application as amended is solicited. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,
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